

**AFFIDAVIT IN SUPPORT OF  
DEFAULT JUDGMENT**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

HEALIX INFUSION THERAPY, INC.,

*Plaintiff,*

V.

HELIX HEALTH, LLC AND STEVEN  
MURPHY, INDIVIDUALLY,

*Defendants*

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CIVIL ACTION NO. 4:09-CV-02072

**AFFIDAVIT OF SCOTT WEISS IN SUPPORT**  
**MOTION FOR DEFAULT JUDGMENT**

STATE OF TEXAS §  
§  
COUNTY OF FT. BEND §

My name is Scott Weiss. I am over eighteen years of age, competent to give this affidavit, and I have never been convicted of a felony or misdemeanor involving moral turpitude. I serve as Corporate Counsel for Healix Infusion Therapy, Inc. I am licensed in the State of Texas and admitted to all state and federal courts in Texas, as well as the United States Fifth Circuit Court of Appeals and the United States Court of Appeals for the Federal Circuit.

1. Healix filed suit against Defendants Steven Murphy, individually and on behalf of Defendant Helix Health, LLC for breach of a settlement agreement, trademark infringement and fraud. Healix amended its complaint on July 6, 2009 [Docket Entries #1 and #2].

2. Healix attempted to have Defendants personally served with its First Amended Complaint a total of six times, but without success. Healix also attempted service on Defendants by registered mail, which was initially rejected [Docket. Entry #7].

3. Healix moved to have Defendants served with substitute service, which the Court granted on September 30, 2009 [Docket Entry #7].

4. On October 3, 2009, Healix filed its return of service reflecting that Defendants had been served on the same day in accordance with the September 30, 2009 order [Docket Entry #10].

5. Defendants have not filed an answer within twenty (20) days after the date of service. Service was in accordance with the Federal Rules of Civil Procedure [Docket Entry #13].

6. Defendants are not infants, incompetent persons, or members of the United States military. Because of their failure to file an answer or otherwise appear in this litigation, Defendants are deemed to have admitted the truth of the well-pleaded allegations in the First Amended Complaint.

7. The time for Defendants answer' has not been extended by any stipulation of the parties or any order of the Court. Defendants have failed to plead in response or otherwise answer Healix's Complaint as required by Rule 12(a)(1) of the Federal Rules of Civil Procedure.

8. The exhibits attached to my affidavit are as follows:

Exhibit "A"—a true and correct copy of the parties' May 1, 2009 Settlement Agreement.

Exhibit "B"—true and correct copies of printouts on November 19, 2009 showing Defendants' use of the "Helix Health" name without geographical reference and past the 30 day deadline set forth in Section Two of the Settlement Agreement.

Exhibit "C"—a true and correct copy of two emails on June 5, 2009 that are kept in the normal course of business.

Exhibit "D"—a true and correct copy of two emails on June 5, 2009 and June 6, 2009 that are kept in the normal course of business.

Exhibit "E"—a true and correct copy of a printout from the Connecticut Secretary of State's Office on November 19, 2009 that shows the name "Helix Health" has not been changed as required in Section Two of the Settlement Agreement.

Exhibit "F"—a true and correct copy of a printout on November 19, 2009 from the Department of Defense reflecting that Defendant Steven Murphy is not currently serving in the military.

Exhibit "G"—true and correct copies from the United States Patent and Trademark Office showing Healix is the owner of Registration Nos. 2,258,592; 3,098,781; 3,098,782 and 3,101,469.

Exhibit "H"—true and correct copy of printout from the United States Patent and Trademark Office regarding suspension of Healix's application for HEALIX PRACTICE SIMPLICITY in light of HELIX HEALTH prior application.

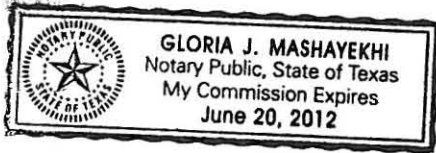
Exhibit "I"—true and correct copy of a printout on November 19, 2009 from the Texas Secretary of State's website for Healix Health Services, Inc.

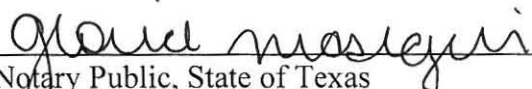
Exhibit "J"—affidavit of Scott Weiss as to attorney's fees in this case.

Further affiant sayeth not.

  
\_\_\_\_\_  
Scott Weiss

**SUBSCRIBED AND SWORN TO BEFORE ME** on November 19, 2009.



  
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Notary Public, State of Texas